

## **201 KAR 46:090. Complaint Process and Administrative Hearings.**

RELATES TO: KRS 311B.050, 311B.100, 311B.120, 311B.150, 311B.160, 311B.170, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050(1), (2), (7), 311B.120, 311B.170, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(1) and (2) require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce the chapter. KRS 311B.050(7) requires the board to investigate violations of the chapter, conduct hearings, resolve allegations, and to impose sanctions or penalties if appropriate. KRS 311B.120, 311B.180, and 311B.190 require the board to promulgate administrative regulations to establish and assess penalties and fees. KRS 311B.170 requires the board to provide an administrative hearing process for a violation of KRS Chapter 311B. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. This administrative regulation establishes, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the board in hearing appeals of actions taken under the public health laws of the Commonwealth.

### **Section 1. Receipt of Complaints. (1) A complaint:**

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing; and
  2. Signed by the person offering the complaint; and
- (c) May be filed by the board based upon information in its possession.

(2)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(c) The board shall evaluate the date of receipt based upon the postmark date, or, if not sent through the mail, the date hand stamped on the complaint.

(3)(a) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from receipt of the response to submit a written reply to the response.

(c) The board shall evaluate the date of receipt based upon the postmark date or, if not sent through the mail, the date hand stamped on the response.

**Section 2. Initial Review. (1)** After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any relevant material available and make a recommendation to the board.

(a) The names of the individuals and other identifying information shall be redacted to provide anonymity.

(b) The board shall find whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board finds before formal investigation that a complaint is without merit, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.
- (3) If the board finds that a complaint warrants a formal investigation, it shall:
  - (a) Authorize an investigation into the matter; and
  - (b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.

(a) The complaint screening committee shall review the investigative report and make a recommendation to the board.

(b) The board shall find whether there has been a prima facie violation of KRS Chapter 311B or 201 KAR Chapter 46 and if a complaint shall be filed.

(2) If the board finds that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board finds that a violation has occurred but is not serious, the board shall issue a private written admonishment to the licensee.

(a) A copy of the private written admonishment shall be placed in the permanent file of the licensee.

(b) The licensee shall have the right to file a response in writing to the private written admonishment within thirty (30) days of its receipt and may have it placed in a permanent file.

(c) Private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l) and shall not constitute disciplinary action, but may be used by the board for statistical purposes or in subsequent disciplinary action against the credential holder or applicant.

(4) If the board finds that a complaint warrants a disciplinary action, the board shall issue a notice of disciplinary action and inform the licensee:

(a) Of the specific reason for the board's action, including:

1. The statutory or regulatory violation; and

2. The factual basis on which the disciplinary action is based;

(b) That the licensee may appeal the disciplinary action to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(c) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601;

(d) That if the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal; and

(e) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may at any time during this process enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5. Right of Appeal of Application. If the board denies an application or renewal for application, the board shall issue a notice of denial informing the applicant:

- (1) Of the specific reason for the board's action, including:
  - (a) The statutory or regulatory violation; and
  - (b) The factual basis on which the denial is based;
- (2) That the applicant may appeal the pending denial to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;
- (3) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601;
- (4) That if the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the licensee to request an appeal;
- (5) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B;
- (6) That the documentary evidence shall be limited to the application and supporting documents the applicant submitted to the board during the application process and that was considered as part of the board's denial of the application; and
- (7) That if the final order of the board is adverse to an applicant, the board shall impose the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees against the licensee or applicant. If there is financial hardship, the board may waive all or part of the fee.

Section 6. Procedures Without a License. If the board finds an individual performed a diagnostic or therapeutic procedure without a valid license, the board shall issue a notice of civil penalty and inform the individual, and employer of the individual:

- (1) Of the specific reason for the board's action, including:
  - (a) The statutory or regulatory violation;
  - (b) The factual basis on which the civil penalty is based; and
  - (c) The civil penalty to be imposed;
- (2) That the individual or employer may appeal the civil penalty to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;
- (3) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601;
- (4) That if the request for an appeal is not timely filed, the notice of civil penalty shall be effective upon the expiration of the time for the licensee to request an appeal; and
- (5) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. (1) A person may petition for reinstatement after three (3) years from the date of a revocation.

(2) A person seeking reinstatement following a revocation shall comply with the requirements of 201 KAR 46:040, Section 8. (40 Ky.R. 1518; Am. 2126; eff. 3-20-2014; TAm 3-11-2016; 44 Ky.R. 55; eff. 7-17-2017; TAm eff. 11-30-2017.)